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8
9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2008-3

13 SOPHIA MARIE PENLEY
203 W. Fredricks #2
14 Barstow, CA 92311

**DEFAULT DECISION
AND ORDER**

15 Registered Nurse License No. 622652

[Gov. Code, §11520]

16 Respondent.
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18 **FINDINGS OF FACT**

19 1. On or about July 3, 2007, Complainant Ruth Ann Terry, M.P.H., R.N., in
20 her official capacity as the Executive Officer of the Board of Registered Nursing, California
21 Department of Consumer Affairs (Board), filed Accusation No. 2008-3 against Sophia Marie
22 Penley (Respondent) before the Board.

23 2. On or about July 28, 2003, the Board issued Registered Nurse License No.
24 622652 to Respondent. The Registered Nurse License expired on September 30, 2004, and has
25 not been renewed.

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1 3. On or about July 18, 2007, Anna Carpenter, an employee of the
2 Department of Justice, served by Certified and First Class Mail a copy of the Accusation No.
3 2008-3, Statement to Respondent, Notice of Defense, Request for Discovery, and Government
4 Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record with the Board,
5 which was, and is, 203 W. Fredricks, Suite 2, Barstow, CA 92311. On or about September 5,
6 2007, the aforementioned documents via Certified Mail were returned by the U.S. Postal Service
7 marked "Unclaimed."

8 4. A copy of the Accusation, Statement to the Respondent, Notice of Defense
9 and Request for Discovery are attached as exhibit A, and incorporated by reference.

10 5. Service of the Accusation was effective as a matter of law under the
11 provisions of Government Code section 11505, subdivision (c).

12 6. Government Code section 11506 states, in pertinent part:

13 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
14 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
15 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
16 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."
17 Respondent failed to file a Notice of Defense within 15 days after service upon her of the
18 Accusation.

19 7. Respondent failed to file a Notice of Defense within 15 days after service
20 upon him of the Accusation and, therefore, waived his right to a hearing on the merits of
21 Accusation No. 2008-3.

22 8. California Government Code section 11520 states, in pertinent part:

23 "(a) If the respondent either fails to file a notice of defense or to appear at the
24 hearing, the agency may take action based upon the respondent's express admissions or upon
25 other evidence and affidavits may be used as evidence without any notice to respondent; and
26 where the burden of proof is on the respondent to establish that the respondent is entitled to the
27 agency action sought, the agency may act without taking evidence."

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1 9. Pursuant to its authority under Government Code section 11520, the Board
2 finds Respondent is in default. The Board will take action without further hearing and, based on
3 Respondent's express admissions by way of default and the evidence before it, contained in
4 exhibit A, finds that the allegations in Accusation No. 2008-3 are true.

5 10. The total costs for investigation and enforcement are \$9012.25 as of
6 September 11, 2006.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent has subjected her
9 Registered Nurse License to discipline.

10 2. The Board of Registered Nursing is authorized to revoke Respondent's
11 Registered Nurse License based upon the following violations alleged in the Accusation:

12 3. Respondent has subjected her license to disciplinary action for
13 unprofessional conduct pursuant to Business and Professions Code sections 2761(a), (a)(1),
14 (a)(4) and 2762(a) and (e). Among other things, Respondent obtained, possessed and diverted
15 large amounts of controlled substances including Morphine and Methamphetamine.
16 Additionally, Respondent falsified hospital records by signing out Demoral that was never
17 administered to patients. Moreover, on or about June 27, 2005, the Arizona State Board of
18 Nursing denied Respondent's license to practice nursing in that state.

19 **ORDER**

20 IT IS SO ORDERED that Registered Nurse License No. 622652, issued to
21 Respondent Sophia Marie Penley, is revoked.

22 Pursuant to Government Code section 11520, subdivision (c), Respondent may
23 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
24 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
25 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
26 statute.

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1 This Decision shall become effective on January 28, 2008.

2 It is so ORDERED December 28, 2007.

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4 *LaTramene W Tate*

5 FOR THE BOARD OF REGISTERED NURSING
6 DEPARTMENT OF CONSUMER AFFAIRS
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Exhibit A
Accusation No. 2008-3
Related Service Documents

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of the State of California
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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. 2008-3

12 SOPHIA MARIE PENLEY
203 W. Fredricks, #2
13 Barstow, CA 92311

A C C U S A T I O N

14 Registered Nurse License No. 622652

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Ruth Ann Terry, M.P.H, R.N. (Complainant) brings this Accusation solely
20 in her official capacity as the Executive Officer of the Board of Registered Nursing (Board),
21 Department of Consumer Affairs.

22 2. On or about July 28, 2003, the Board issued Registered Nurse License No.
23 622652 to Sophia Marie Penley (Respondent). The Registered Nurse License expired on
24 September 30, 2004, and has not been renewed.

25 JURISDICTION

26 3. This Accusation is brought before the Board, under the authority of the
27 following laws. All section references are to the Business and Professions Code unless otherwise
28 indicated.

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5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

“(a) Unprofessional conduct, which includes, but is not limited to, the following:

“(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

7. Section 2762 of the Code states:

“In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

“(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish

1 or administer to another, any controlled substance as defined in Division 10 (commencing with
2 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
3 defined in Section 4022.

4 “(b) Use any controlled substance as defined in Division 10 (commencing with
5 Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as
6 defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or
7 injurious to himself or herself, any other person, or the public or to the extent that such use
8 impairs his or her ability to conduct with safety to the public the practice authorized by his or her
9 license.

10 “(c) Be convicted of a criminal offense involving the prescription, consumption,
11 or self-administration of any of the substances described in subdivisions (a) and (b) of this
12 section, or the possession of, or falsification of a record pertaining to, the substances described in
13 subdivision (a) of this section, in which event the record of the conviction is conclusive evidence
14 thereof.

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16 “(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible
17 entries in any hospital, patient, or other record pertaining to the substances described in
18 subdivision (a) of this section.”

19 8. Health and Safety Code section 11170 states: “No person shall prescribe,
20 administer, or furnish a controlled substance for himself.”

21 9. Health and Safety Code section 11171 states: “No person shall prescribe,
22 administer, or furnish a controlled substance except under the conditions and in the manner
23 provided by this division.”

24 10. Health and Safety Code section 11173 states:

25 “(a) No person shall obtain or attempt to obtain controlled substances, or procure
26 or attempt to procure the administration of or prescription for controlled substances, (1) by fraud,
27 deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

28 “(b) No person shall make a false statement in any prescription,

1 order, report, or record, required by this division.”

2 11. Section 125.3 of the Code provides, in pertinent part, that the Board may
3 request the administrative law judge to direct a licensee found to have committed a violation or
4 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
5 and enforcement of the case.

6 12. CONTROLLED SUBSTANCES

7 a. “Demerol,” is a brand of meperidine hydrochloride, a derivative of
8 pethidine. It is a Schedule II controlled substance as designated by Health and Safety Code
9 section 11055(c)(16) and is categorized as a “dangerous drug” pursuant to Business and
10 Professions Code section 4022. Demoral is an Opiate.

11 b. “Methamphetamine,” is a Schedule II controlled substance as designated
12 by Health and Safety Code section 11055(d)(2) and is categorized as a “dangerous drug”
13 pursuant to Business and Professions Code section 4022.

14 FIRST CAUSE FOR DISCIPLINE

15 (Obtaining or Possessing a Controlled Substance by Fraud or Deceit)

16 13. Respondent is subject to disciplinary action under section 2761,
17 subdivision (a), on the grounds of unprofessional conduct, as defined in section 2762,
18 subdivision (a), for violating Health and Safety Code section 11171 and section 11173,
19 subdivisions (a) and (b), in that while employed as a registered nurse by Desert Valley Hospital,
20 Respondent, obtained or possessed Demerol (a schedule II controlled substance), by fraud,
21 deceit, misrepresentation or subterfuge, as follows:

22 a. During the period from June 30, 2004 through July 1, 2004, Respondent
23 withdrew and cancelled at least 16 vials of Demerol. Respondent accessed the Pyxis Medstation¹
24 in two different nursing units. Respondent withdrew the narcotics, and immediately cancelled
25 the withdrawals. Respondent failed to report this activity to anyone, including her superiors.

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27 1. The Pyxis Medstation is an automated dispensing device, loaded with medication, kept
28 on nursing units. The Medstation interfaces with the pharmacy computer. Each nurse is
provided with a password that must be used to access the Medstation.

1 California, County of San Bernardino, case number MVI06058, in the case entitled *The People of*
2 *the State of California v. Sophia Marie Hall*, Respondent was convicted on a plea of guilty of
3 violating one count of Penal Code section 242 (battery), a misdemeanor, and one count of
4 violating Business and Professions Code section 4149 (possess hypodermic needle/syringe), a
5 misdemeanor.

6 C. On or about July 7, 1992, in the Superior and Municipal Court of
7 California, County of San Bernardino, Case No. MVI29590, entitled *The People of the State of*
8 *California v. Sophia Hall*, Respondent was convicted on a plea of nolo contendere of violating
9 one count of Penal Code section 470, (forgery), a misdemeanor, and one count of Health and
10 Safety Code section 11550, (use/under the influence of a controlled substance), a misdemeanor.

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PRAYER


1 WHEREFORE, Complainant requests that a hearing be held on the matters herein
2 alleged, and that following the hearing, the Board issue a decision:

3 1. Revoking or suspending Registered Nurse License No. 622652, issued to
4 Sophia Marie Penley;

5 2. Ordering Sophia Marie Penley to pay the Board the reasonable costs of the
6 investigation and enforcement of this case, pursuant to Business and Professions Code section
7 125.3;

8 3. Taking such other and further action as deemed necessary and proper.
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10 DATED: 7/3/07
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13 
14 RUTH ANN TERRY, M.P.H., R.N.
15 Executive Officer
16 Board of Registered Nursing
17 State of California
18 Complainant
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